

[Ryan v. Niagara Mohawk Power Co.](#), 85-ERA-24 (Sec'y Aug. 9, 1989)

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U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR  
WASHINGTON, D.C.

DATE: August 9, 1989  
CASE NO. 85-ERA-24

IN THE MATTER OF

JOHN E. RYAN,  
COMPLAINANT,

v.

NIAGARA MOHAWK POWER CORP.,  
RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

ORDER TO SUBMIT INFORMATION

On January 15, 1988, Complainant Ryan requested withdrawal of the above-captioned case. Complainant states that Respondent Niagara Mohawk Power Corporation does not object to Complainant's request.

Complainant states no reason for his desire to withdraw his complaint. It appears, however, that Ryan and Niagara may have entered into a settlement of Ryan's complaint. This is suggested by the fact that, in Case Nos. 87-ERA-47 and 88-ERA-7 involving the same parties, Niagara informed the Administrative Law Judge (ALJ) that "a settlement has been reached in the above-referenced

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actions, and the other actions pending before the Secretary of Labor." See Letter of January 9, 1988 from Robert W. Kopp to ALJ Robert J. Shea. (emphasis supplied).

If the parties have settled this case, it is necessary that the settlement agreement be submitted to me for a determination of whether the terms of the settlement are fair, adequate and reasonable.<sup>1</sup> *Macktal v. Brown & Root, Inc.*, No. 86-ERA-23, Order to Submit Settlement Agreement issued May 11, 1987, slip op. at 2; *Johnson v. Transco Products*, Case No. 85-ERA-7, issued August 8, 1985, slip op. at 1; *Chan Van Vo v. Carolina Power and Light Co.*, Case No. 85-ERA-3, issued April 12, 1985, slip op. at 1. Although it is not necessary that the settlement agreement be part of the final order, as the Secretary explained in *Macktal v. Brown & Root*, "[w]here a settlement is not fair and equitable to a complainant, I cannot approve it for to do so would be an abdication of the responsibility imposed upon me by Congress to effectuate the purpose of section 5851, which is to encourage the reporting of safety violations by prohibiting economic retaliation against employees reporting such violatins [sic]." Slip op. at 2.

Therefore, if the parties desire to resolve this matter by mutual agreement, they should submit, within 30 days from receipt of this order, an explanation of the basis for Complainant's withdrawal of his complaint. If the basis of that withdrawal is an agreement between the parties, they should submit a copy of the settlement agreement signed by both parties, including Complainant individually, and setting forth all the terms and conditions agreed to. If all parties, including Complainant individually, have not signed the settlement agreement itself, the parties shall submit a certification or stipulation, signed by all parties to the agreement, including Complainant individually, demonstrating their informed consent to the agreement.

SO ORDERED.

ELIZABETH DOLE  
Secretary of Labor

Washington, D.C.

**[ENDNOTES]**

<sup>1</sup> Section 5851(b)(2)(A) of 42 U.S.C. provides for termination of a proceeding "on the basis of a settlement entered into by the Secretary. . . ." In lieu of being a signatory to the settlement, it has been the Secretary's practice to review the terms of the settlement entered into by the private parties.